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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,545	02/21/2001	Michael Orr	P-3059-US	5618
35856 7590 07/29/2008 SMITH FROHWEIN TEMPEL GREENLEE BLAHA, LLC Two Ravinia Drive Suite 700 ATLANTA, GA 30346				
EXAMINER				
REFAI, RAMSEY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/788,545

Applicant(s)

ORR ET AL.

Examiner

Ramsey Refai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 7-9, 11, 12, 15, 17-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-9, 11, 12, 15, 17-19, and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Responsive to Amendment filed May 14, 2008. Claims 1, 9, 11, and 12 have been amended.

Claims 1, 2, 7-9, 11, 12, 15, 17-19, and 21 remain pending.

Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive.

In the remarks, the Applicant argues with substance:

Argument A: *the Applicant disagrees with the 101 rejection; the specification states that the software application is residing on or running on a computer, "the predictive server and the client agent are components to the system, whether they are software applications running on a computer, or hardware switches being triggered **is not relevant in this context**".*

In response, the Examiner respectfully disagrees. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. The claims remain directed to merely software. Software per se claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. System claims that are merely directed to software are non-statutory.

Argument B: *Klein is not a valid 102 reference since the column 6, lines 10-20 and 64-67 are not taught by provisional '698.*

In response, the Examiner respectfully disagrees. Klein clearly supports these portions of the text on pages 9 and 11 of the provisional.

Argument C: *Klein does not receive response from the server. Klein does not forward any responses.*

In response, the Examiner respectfully disagrees. Klein et al teach web server 112 will have returned to it a resultant web page (**column 5, lines 39-45**) and will then forward the web page to the web browser (**column 5, lines 65-67**).

Argument D: *Klein does not teach "generating at the predictive server storage unit a predictive list of requests for objects, which are needed for presenting the requested web page, based on an analysis of information contained within said stored first response",*

In response, the Examiner respectfully disagrees. Klein et al teach statistical information is received from Web Agent 116, that relates to which web page is most often accessed directly after the current web page being viewed at this moment in Web Browser 110. The web page most likely to be accessed next, Web Agent 116 provides an Object List 126, to Java Applet 124 of Web Page Objects 128 that is ordered in statistical significance (high to low). Objects 128 can be graphics, applets or other web page content. Java Applet 124 makes a request for that Web Object 128 over network 102. Web Server 112 services this request and delivers to Java Applet 124, over network path 102, the requested Web Object 128. Java Applet 124 copies Web Object 128 into Web Browser Cache 130 where it will reside and be made available to Web Browser 110 on subsequent Web Browser 110 transactions. Thus, Web Object 128 is made available before actually needed by Web Browser 110. (**See at least column 6, lines 10-36**) Therefore Klein et al meet the claimed limitation.

Argument E: *Klein does not issue predictive requests to the server and does not received predictive responses.*

In response, the Examiner respectfully disagrees. Klein et al teach that requests are made for objects or web pages prior to being requested and are stored in the browser cache to be available to the user prior to actually needing those pages (**see column 6, lines 10-35, column 7, lines 5-37**).

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, 7-9, and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a system comprising a predictive server and a client agent, which as described on page 4 of the Applicant's specification, are software applications. Therefore the system is merely software. Software programs/applications are not one of the statutory classes of invention. Software programs/applications must be tangibly embodied on a computer readable medium and be drawn to a practical application in order to be eligible for patent protection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 11, 12, and 17-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 11 includes the limitations "*currently requested webpage*", which do not appear to be supported by the Applicant's specification.

Claims 12, 17-19 depend upon claim 11 above and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, 7-8, 11, 12, 15, 17-18, and 21 rejected under 35 U.S.C. 102(e) as being anticipated by Klein et al (US Patent No. 7,047,485).

8. As per claim 1, Klein et al teach a system for enhancing perceived throughput between a client and a server, said system comprising:

a predictive server in association with said server wherein said predictive server comprises a server analyzer unit and a server storage unit (**column 6, lines 10-20, fig 1: web Agent 116 running on web server 112**);

a client agent in association with the client, wherein the client agent comprises an agent analyzer unit and an agent storage unit (**column 6, lines 64-67, fig 1; Applet 124 running on client 104**);

wherein the predictive server is capable of:

receiving at the predictive server analyzer unit, a first response to request for a web page from said server **(column 5, lines 28-38)**;

generating at the predictive server storage unit a predictive list of requests for objects, which are needed for presenting the requested web page, based on an analysis of information contained within said first response **(column 6, lines 10-29)**;

issuing predictive requests to the server, receiving from the server predictive responses **(column 6, lines 24-36; requests for web objects in object list are made to web server 112 which can then obtain the requested object from application server 114, see column 5, lines 35-38)**, and

forwarding the first response and the received predictive responses to the client agent which, in turn, is capable of forwarding the first response and the received predictive responses to the client **(column 6, lines 28-36)**; and

wherein the client agent is capable of:

receiving with the agent analyzer unit of the client agent via the predictive server said first response **(column 5, lines 28-38)**,

analyzing the first response **(column 6, lines 34-67)**

automatically forwarding said first response to the client **(column 6, lines 28-36)**,

receiving from the client a request for an object contained in first response and is needed for presenting the requested web page **(column 7, lines 1-37)**,

comparing the request for said object with the already received predicted responses, wherein when an already received corresponding predicted response exists the existing predicted response is forwarded to the client **(column 5, lines 39-45, column 3, lines 43-49)**.

9. As per claim 2, Klein et al teach wherein the predictive server is further capable of generating an agent predictive list of objects which are needed for presenting the requested web page (**column 6, line 65-column 7, line 37**); and wherein the client agent is further capable of comparing the request against the agent's predictive list, when an already received predicted response does not exist, and if no entry for that request for an object, the request is forwards toward the server (**column 6, lines 10-53; in pre-caching, the cache is first checked to see if the object requested is available prior to sending the request to the server**).
10. As per claim 7, Klein et al teach wherein said client agent receives requests from said client and forwards the requests to said predictive unit using encapsulation (**column 4, lines 15-28; request sent in web pages**).
11. As per claim 8, Klein et al teach wherein data transmitted between said client agent and said predictive server undergoes a data processing step selected from a group consisting of data compression, partial information transfers, protocol conversion, and data packet combining (**column 3, lines 59-63**).
12. As per claim 21, Klein et al teach wherein said client agent is further capable of issuing a re-load command (**column 4, lines 15-27; web browser feature**).
13. As per claims 11, 12, 15, 17-18, these claims contain similar limitations as claims 1, 2, 7, 8, and 21 above and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 9 and 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al in view of "Official Notice".

16. As per claim 9, Klein et al fail to teach *wherein the client agent is adapted to transmit a fake response to a client before a real response from said server has been received*. However, "Official Notice" is taken that the concept and advantage of sending a "fake" response before a real response is well known in the art since web pages contain objects, such as images or text, which may take longer to download than other objects. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include such a feature in Klein et al because doing so would allow for a partial response or "fake" response to be sent to the requesting user while the server continues to download all objects of the requested page.

17. Claim 19 contains similar limitations as claim 9 above and is therefore rejected under the same rationale.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571)272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
July 24, 2008
/R. R./
Art Unit 3627

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627